

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

TYSON FOODS, INC., et al,)

Defendants.)

4:05-CV-00329-TCK-SAJ

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THE VIDEOTAPED 30(b)(6)

DEPOSITION OF GARY MURPHY, produced as a witness
on behalf of the Plaintiff in the above styled and
numbered cause, taken on the 30th day of July, 2007,
in the City of Fayetteville, County of Washington,
State of Arkansas, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

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1 questionnaire.

2 Q All right.

3 A This is the characteristics sheets, two
4 separate sheets.

5 Q Do you know whether Simmons Foods and its 02:25PM
6 predecessor known as Simmons Industry, Inc., owns
7 land other than where its office facilities or plant
8 processing facilities are?

9 A Not that I'm aware of, no, sir.

10 Q Do you know whether or not Simmons Foods 02:26PM
11 and/or its predecessors owns lands where poultry
12 waste has been spread upon?

13 A Poultry litter?

14 Q Poultry litter.

15 A If Simmons owns -- I'm sorry, ask the question 02:26PM
16 again.

17 Q I was under the impression that, and I thought
18 it was Simmons Industries was entitled to certain
19 land in Oklahoma, and it doesn't appear to be that
20 that land was in use for your processing plant or 02:27PM
21 anything like that. I guess my question was, do you
22 know whether or not Simmons owns land where it would
23 have deposited or spread poultry waste from any of
24 its barns or grower, contract grower barns?

25 A No, sir. 02:27PM

1 MR. ELROD: Question was, do you know, and
2 your answer was no.

3 MR. GARREN: Right.

4 Q And that's what you -- you're saying you don't
5 know; it's not that they don't have; it's just that
6 you don't know?

02:27PM

7 A I don't know of any, no, sir.

8 Q How long to your knowledge has the general
9 size of the house been at the 40 by 400 size?

10 A I know that particular size goes back to mid
11 to late '80's. I do know that there were houses
12 smaller than that.

02:27PM

13 Q And -- but that's about the time where that
14 size house became a fairly standard model?

15 A It's either a 40 by 400 or 40 by 500.

02:28PM

16 Q Okay, and before that how small would a house
17 be that would actually grow for Simmons?

18 A I have seen records where you would have had a
19 32-foot house, probably 320 in length.

20 Q Describe the nature of the poultry waste that
21 comes out of a breeder house versus the broiler
22 house.

02:28PM

23 MR. ELROD: Object to form.

24 A Poultry litter?

25 Q Uh-huh.

02:29PM

1 **A** Typically --

2 **Q** Let me back up and maybe this will get us
3 quicker. Is it a wet or dry waste that comes out of
4 a breeder house versus a broiler house?

5 **A** It's dry but it has more moisture content than 02:29PM
6 a broiler.

7 **Q** You don't have facilities that generate liquid
8 waste?

9 **A** No, we don't.

10 **Q** And is Simmons in the egg producing business 02:29PM
11 for other than breeding?

12 **A** No, sir.

13 **Q** I noticed on the -- in Exhibit 31 the distance
14 from your various plants or facilities are listed.
15 Is that a mileage distance? 02:30PM

16 **A** Yes.

17 **Q** It says mileage info?

18 **A** Yes.

19 **Q** Is there a limit by which -- which one of
20 those facilities is central to determining how far a 02:30PM
21 grower can be and Simmons would contract with them?

22 **A** The Fairland feed mill.

23 **Q** How far then would Simmons go to contract with
24 somebody that is supplied from that mill?

25 **A** Nothing outside of a hundred miles. 02:30PM

1 Q So anything under a hundred miles would be
2 considered as a potential grower site?

3 A Would be a potential, yes, sir.

4 Q Does Simmons have any growers east of the
5 Illinois River watershed that would flow let's say
6 into the Beaver Lake watershed?

02:30PM

7 A Yes, sir.

8 Q Do you know how many?

9 A I do not off the top of my head know.

10 Q Is that what -- what watershed is that called
11 over there?

02:31PM

12 A I'm not sure.

13 Q Is that a watershed that is distinguishable in
14 your records now under the way you keep records by
15 all watersheds?

02:31PM

16 A It would be distinguishable, yes.

17 Q Am I correct that you have an obligation to
18 report your production numbers to the USDA?

19 A Yes, sir.

20 Q And how long have you been doing that; as long
21 as you've been in production?

02:31PM

22 A Yes, sir.

23 Q So if USDA has a history of the poultry
24 production numbers based in part on Simmons, it's
25 likely going to be accurate; would you agree?

02:31PM

1 MR. McDANIEL: Object to the form.

2 MR. ELROD: Object to the form.

3 A Accurate in total?

4 Q Yes, sir.

5 A Yes. 02:32PM

6 Q That's assuming, of course, each integrator
7 gave truthful and honest numbers to the USDA to
8 compile, but we assume that's correct?

9 A Yes.

10 MR. McDANIEL: Object to the form. 02:32PM

11 Q There's no reason why Simmons would give the
12 USDA a number that wasn't true; is that a fair
13 statement?

14 A That's correct.

15 Q Does USDA do any verification process on the 02:32PM
16 numbers that Simmons produces?

17 MR. ELROD: Object to the form,
18 speculation.

19 A I don't know.

20 Q Has Simmons done anything to compare the size 02:32PM
21 of its operation in the Illinois River watershed
22 with that of the other integrators in this lawsuit?

23 A We're involved in a couple of things that,
24 yes, we do look at the differences or how we relate
25 to the other integrators. 02:33PM

1 Q What measure do you use to make that
2 comparison?

3 A Number of houses.

4 Q Do you know what percentage Simmons has in
5 relation to the total of the integrators in this
6 lawsuit in the Illinois River watershed?

02:33PM

7 A Last time I looked it was around 15 or 16
8 percent.

9 Q While we're there, let me hand you Exhibit No.
10 40. This is a document I received in a document
11 production from BMPs, Inc. group. It happened to be
12 in there. Do you see it's dated March 7, '07? Do
13 you know who Jamie Burr is at Tyson?

02:34PM

14 A Yes.

15 Q And you know who Sheri Herron is?

02:35PM

16 A Yes.

17 Q This shows Simmons with 269 in number of
18 houses at 15.9 percent in relation to all of those
19 integrators listed there. That's pretty much what
20 you just testified to, isn't it?

02:35PM

21 A 268 I believe.

22 Q I mean the percentage was about 16 percent?

23 A Yes.

24 Q All right. So as far as you know, this would
25 be representative of the other percentages for the

02:35PM

1 other integrators based upon that determination you
2 talked about earlier was being done?

3 MR. McDANIEL: Object to form.

4 MS. HILL: Form.

5 A I don't know for a fact. I know that Simmons' 02:36PM
6 numbers are correct.

7 Q Okay. I'm going to hand you what's been
8 marked as Exhibit 5. I want you to tell the court
9 what this is.

10 A This would be a recap of -- since 19 -- looks 02:36PM
11 like '95, a particular time period where a
12 particular grower's settlements were accounted for.

13 Q This puts us back before the 1999 time frame
14 you said you changed programs?

15 A Uh-huh. 02:36PM

16 Q Is this then on a different computer or let me
17 ask it this way: Is this data still available?

18 A Not that I'm aware of, no, sir.

19 Q So this document that I'm seeing that was
20 produced by Simmons would be from hard copy records 02:37PM
21 maintained somewhere?

22 A It's my understanding, yes.

23 Q Would this likely be in files other than the
24 grower file?

25 A I wouldn't think so, no, sir. 02:37PM

1 Q So you think it would be found within a grower
2 file if you were going to look for this document?

3 A Yes, sir.

4 Q Is there someone who might know better than
5 you about that at Simmons; would Miss Londagin know
6 better?

02:37PM

7 A Probably Pat Spence.

8 Q All right. Let's look at a Document No. 6
9 then, if you would, sir. This purports to be a
10 grower settlement recap for a grower named Joel
11 Reed. Is this the kind of document that each grower
12 would get at the conclusion of a flock?

02:38PM

13 A Yes, sir.

14 Q Look through the entire document, if you
15 would, and I want to make sure that we know where
16 it's supposed to start and stop as to the data that
17 a grower gets. The flock number, that's going to be
18 indicative of two different flocks; correct?

02:38PM

19 A Yes, uh-huh.

20 Q So if I've got Flock No. 701 on this first
21 page and I go back to Page 267, I see Flock No. 601,
22 that's a new flock for a different time?

02:38PM

23 A That's correct.

24 Q So the first four pages that we're looking at
25 here, that is Reed No. 291 through 294, does that

02:39PM

1 represent a full and complete settlement statement
2 recap for a grower or are there other forms or
3 pieces of forms missing?

4 **A** Typically for a particular flock, the grower
5 would receive this front page.

02:39PM

6 **Q** The front page only?

7 **A** Yes.

8 **Q** And what then -- the second page was 292,
9 reflects what looks to be a ranking. Would he not
10 receive that?

02:39PM

11 **A** I'm sorry, yes. I just now --

12 **Q** Realized what it is?

13 **A** Yes.

14 **Q** All right. So he's also going to get that
15 page also to show where he falls in the ranking of
16 that flock?

02:39PM

17 **A** That's correct.

18 **Q** What is it that we're looking at on the Page
19 293 that says broiler grower settlement at the top?

20 **A** Those would be the condemnation reports that
21 would have been pulled from USDA reports out of the
22 plant.

02:40PM

23 **Q** This is not given to the grower, though?

24 **A** I think it is, yes.

25 **Q** All right. I'm not trying to trick you. This

02:40PM

1 came from Mr. Reed himself, so I'm just trying
2 to get to what is the normal course of what is
3 produced and who gets it, and then the last page of
4 that report at 294, this is also a report he, Mr.
5 Reed, would get?

02:40PM

6 **A** That would have been his feed and any
7 medications, yes.

8 **Q** Okay. Is there anything you see here that's
9 missing that a grower normally would receive for a
10 recap of a settlement?

02:40PM

11 **A** I don't think so.

12 **Q** So if I look at Page 294, the feed that's
13 listed there under feed transactions, that shows the
14 amount of weight that was delivered. Some is picked
15 up when you change type of feed?

02:40PM

16 **A** That's correct.

17 **Q** And then you've got kind of a recap by
18 withdrawal, finisher, grower and starter. Those are
19 the feeds that you're normally given; is that right?

20 **A** That's correct.

02:41PM

21 **Q** Then you've got a total of 698,730; do you see
22 that number?

23 **A** Yes, sir.

24 **Q** That's going to be pounds for that flock?

25 **A** Yes, sir.

02:41PM

1 Q So when we go back over to see the exhibit you
2 brought in as Page 32198 that we haven't numbered
3 yet, the pounds that are the feed in thousand tons
4 that you have on this Page 32198 would be a
5 culmination of these numbers taken off of settlement
6 sheets from individual growers in that watershed;
7 correct?

02:41PM

8 A That's correct.

9 Q All right. Growers are assigned a number in
10 the computer it looks like; is that your
11 understanding?

02:41PM

12 A Yes, sir.

13 Q Let's -- I'm going to change subjects on you
14 now and under Inquiry No. 9, I'll read it to you so
15 you don't have to read it out. It's the identity,
16 the composition and constituents of poultry waste
17 generated -- poultry waste generated at your -- at
18 poultry growing operations within IRW, specifically
19 past and present, as well as any studies, analysis,
20 testing, investigations or research of the
21 composition or constituents of poultry waste. You
22 are again the designated representative to speak on
23 behalf of Simmons Foods, Inc.; correct?

02:42PM

02:42PM

24 A Correct.

25 Q What did you do to prepare yourself to testify

02:42PM

1 on that inquiry, that subject area?

2 **A** Nothing specifically.

3 **Q** Did you review any records?

4 **A** No, sir.

5 **Q** All right. Does Simmons know what the 02:42PM
6 composition and constituents of poultry waste is
7 generally?

8 **A** I haven't seen any test results, no, sir.

9 **Q** Well, notwithstanding test results, does
10 Simmons have any knowledge of what the constituents 02:43PM
11 or composition of poultry waste is generally?

12 **A** We've read documentation or documents so
13 stating, yes, sir.

14 **Q** What kind of documents has Simmons read or
15 looked at that would tell you that? 02:43PM

16 **A** Specifically I can't give you the name of an
17 article or anything like that.

18 **Q** What would be the general source of the
19 information that would create that article for you
20 to read or look at? 02:43PM

21 **A** I'm sure it would have been off some of the
22 periodicals that we get from time to time.

23 **Q** And would those periodicals include those from
24 the University of Arkansas or other universities?

25 **A** Would have been articles that would have been 02:43PM

1 printed in those periodicals from those
2 universities.

3 Q You mentioned earlier the Southeastern Egg
4 Association. Is that a source of articles that you
5 might be looking at? 02:44PM

6 A Could be, yes, sir.

7 Q What other sources or what periodicals do you
8 know that Simmons receives?

9 A We get The Poultry Times, Broiler USA.

10 Q Broiler USA? 02:44PM

11 A Yes, sir. Those are the ones that just come
12 to mind right now.

13 Q Are there others?

14 A I'm sure there are.

15 Q Do you know what -- the time frame you've been
16 receiving The Poultry Times? 02:44PM

17 A It's a number of years.

18 Q That's pretty broad, so can you give me some
19 help in narrowing?

20 A I'm not sure how long Poultry Times has been
21 published but been in the business for a long time
22 and I -- seems like I remember it forever but --

23 Q Okay, you've been at least with Simmons
24 sixteen years. Do you think you've had it that
25 long? 02:45PM

1 **A** I think so.

2 **Q** Broiler USA, do you know how long --

3 **A** I think it's a relatively new publisher.

4 **Q** Relatively new meaning within five years?

5 **A** Five years probably.

02:45PM

6 **Q** If you think of any others while we're
7 talking, would you tell them to me?

8 **A** Sure.

9 MR. ELROD: Object to the form. Memory
10 contest.

02:45PM

11 MR. RIGGS: You lose.

12 MR. ELROD: What's it, shirts and skins?

13 **Q** Does Simmons know that there can be found
14 metals, such as zinc and copper, in poultry waste
15 constituents?

02:45PM

16 **A** Yes.

17 **Q** Does Simmons know that potassium can be found
18 in waste constituents from poultry?

19 **A** Yes.

20 **Q** And does Simmons know nitrogen and phosphorus
21 can be found in poultry waste?

02:46PM

22 MR. McDANIEL: Object to the form.

23 **A** I understand that, yes.

24 **Q** Okay, and that can be before it hits the
25 bedding material?

02:46PM

25	A	Yes, sir.	02:47PM
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1 Q When did -- what is the time period where
2 Simmons owned its own growing houses or barns and
3 produced chickens or poultry?

4 A Been mid to late '80's to late '90's.

5 Q Were any of those barns or facilities located 02:48PM
6 within the Illinois River watershed?

7 A One.

8 Q Where was it?

9 A Just north of Siloam.

10 Q And what was the size of that house? 02:48PM

11 A It was a 40 by 400.

12 Q And was it a single house or was it a single
13 farm with multiple houses?

14 A It was a single farm with multiple houses.

15 Q How many houses? 02:49PM

16 A Eight.

17 Q Did you produce broilers there or other types?

18 A Both.

19 Q So broiler and pullets or broiler and
20 breeders? 02:49PM

21 A There's actually breeders and broilers.

22 Q So you had a combination there?

23 A Not at the same time.

24 Q Not at the same time?

25 A Yes. 02:49PM

1 Q Is there any difference in the interior of a
2 breeder barn than a broiler barn?

3 A Yes.

4 Q And other than equipment is in there to
5 facilitate breeding; is that correct?

02:49PM

6 A That's correct.

7 Q Does it cut down on the number of birds that
8 can be put into that barn compared to the broilers
9 that can be put into it?

10 A Yes.

02:49PM

11 Q Roughly in a 400 by 40 what's the difference
12 in the number of birds you would see?

13 A Depends on the size broiler you are trying to
14 grow.

15 Q Let's start with a little one.

02:50PM

16 A Start with a little one, be roughly 26,000
17 head in there compared to a breeder house, 8 to
18 9,000.

19 Q Okay, and so the larger broiler house would
20 have how many birds in it?

02:50PM

21 A 22, 20,000 or 22,000.

22 Q Am I correct in that the breeder house would
23 have a single flock basically in a one-year period?

24 A Basically, yes, sir.

25 Q It overlaps a little but generally it's just

02:50PM

1 short of a year for a breeder flock?

2 **A** They will typically have those birds for
3 around 45 weeks.

4 **Q** When Simmons operated its houses in the '80's,
5 '90's, who was -- how did Simmons remove and dispose 02:50PM
6 of the poultry waste generated in those barns?

7 **A** Litter was typically sold to contract haulers.

8 **Q** Does -- and then those contract haulers would
9 spread it someplace?

10 **A** That's my understanding, yes. 02:51PM

11 **Q** Does Simmons have haulers that it uses on a
12 regular basis?

13 **A** They change from time to time but --

14 **Q** Generally they're constant?

15 **A** Simmons Foods does not. 02:51PM

16 **Q** All right. Who does?

17 **A** Contract growers do.

18 **Q** All right. Are they organized for a reason; I
19 mean are specific haulers picked to do work for
20 Simmons? 02:51PM

21 **A** No.

22 **Q** So how many contract haulers operate for
23 Simmons or its facilities, if you know?

24 **A** I don't know. They don't work for us.

25 **Q** Did Simmons keep the waste disposition records 02:51PM

1 from its houses it operated in the '80's and '90's
2 in the watershed?

3 A Litter records?

4 Q Yes, sir.

5 A Yes, sir.

02:52PM

6 Q And are those still kept today?

7 A '80's, '90's -- I need to back up. I'm not
8 sure. I have not seen those records.

9 Q They may exist but somebody needs to look; is
10 that a fair statement?

02:52PM

11 A Yes, sir.

12 Q And they would -- would they be in the storage
13 building?

14 A Yes, sir.

15 Q We spoke about earlier?

02:52PM

16 A Yes, sir.

17 Q Has Simmons ever measured the amount of waste
18 that's actually generated from either a broiler or a
19 breeder or a layer?

20 A No, sir.

02:52PM

21 Q And when I ask that question, would it be the
22 same whether it's a single bird or a flock of birds,
23 that you've not measured the amount of waste
24 generated?

25 A Neither.

02:53PM

1 Q What's the purpose of knowing feed conversion
2 relative to growing birds?

3 A Simply a calculation telling you how many
4 pounds of feed that the bird consumed.

5 Q Does it impact the amount of money paid to a 02:53PM
6 broiler grower?

7 A Yes.

8 Q Better feed conversion rate might be paid
9 more?

10 A Yes. 02:53PM

11 Q When I say better feed conversion rate, that
12 means a grower has been able to grow a bird with
13 less feed but get the same weigh-in weight?

14 A That's correct.

15 Q Do you know what the general rule of thumb or 02:53PM
16 average would be to grow a large broiler to the
17 seven and a quarter pounds, how much feed for that
18 bird?

19 A You figure around 2 to 2.05 from feed
20 conversion. 02:54PM

21 Q That means 15 pounds --

22 A Roughly.

23 Q -- of feed would go into the bird to create
24 the seven-pound bird?

25 A That's correct. 02:54PM

1 Q Are smaller birds on a same conversion ratio?

2 A Typically a little bit better.

3 Q So might be more than two?

4 A A little better, little less.

5 Q Less than two?

02:54PM

6 A Yes.

7 Q This may be too obvious but I just want to
8 make sure. A larger bird is going to eat more feed;
9 correct?

10 A Over its life, yes.

02:55PM

11 Q Yes, and I do mean over its life. Exhibit No.
12 7, is this the questionnaire or the survey that
13 you've talked about today and we said we'd get
14 around to it?

15 A Yes, sir.

02:55PM

16 Q Only ones I have -- I didn't put them all here
17 but I found it for -- some for '03, '04 and '05, but
18 you're still retaining -- you're still asking and
19 receiving for surveys in '06 and '07?

20 A That's correct.

02:55PM

21 Q And you thought it might go back as far as '02
22 but you're not sure?

23 A That's correct.

24 Q Why do you ask on this form for the litter
25 test results? It's near the bottom.

02:56PM

1 **A** You know, I really don't know other than just
2 we just keep it for our records.

3 **Q** Why do you not ask for a soil test report
4 result where it's spread?

5 **A** That's -- we don't know -- number one, I don't 02:56PM
6 know that the grower would know at that point, at
7 the point in time he received the questionnaire as
8 to where his litter might be spread. So the land
9 may not even be tested at the time he sends this out
10 or we send this out. 02:56PM

11 **Q** I notice a confidential stamp on this document
12 in the lower right-hand corner; do you see that?

13 **A** Yes, sir.

14 **Q** What would in your opinion be confidential
15 about the information on this record? 02:57PM

16 **A** I'm not sure why the confidential is on there.

17 **Q** We have on this first page of this document an
18 Oklahoma grower; do you see that?

19 **A** Yes, sir.

20 **Q** And to my knowledge there's nothing on here 02:57PM
21 that isn't already required by law to be reported;
22 would you agree?

23 **A** That's correct.

24 **Q** I'm assuming then that Simmons didn't put this
25 stamp on it when it produced it to its lawyers but 02:57PM

1 do you know?

2 **A** It would be speculation on my part. I don't
3 know.

4 **Q** Let's look at Exhibit No. 8, if you would,
5 please. Do you recognize that document? 02:58PM

6 **A** I don't know that I've seen this one
7 specifically, no, sir.

8 **Q** This appears to be a document, as you can see
9 on the date there, from January through December of
10 1998 and it lists watersheds as you can see there. 02:58PM
11 To your knowledge as the designee for Simmons, is
12 this the kind of data that Simmons is creating and
13 preserving?

14 **A** During this time period, this would have been
15 the company-managed farms. 02:59PM

16 **Q** So those would be the company-managed farms
17 that we also referred to as investor farm?

18 **A** Yes, sir.

19 **Q** And so do you know why this data is being
20 retained at this time on those farms? 02:59PM

21 **A** To date -- like I say, I don't know that I've
22 seen this particular sheet where it's in summary.
23 To date these would be accounted for in our
24 individual watershed reports that I see.

25 **Q** In individual watershed reports? 02:59PM

1 **A** Yes, sir.

2 **Q** And would those individual watershed reports
3 break out the farms that are contributing to that
4 data by the farm number that's coded here that we
5 see on this summary?

02:59PM

6 **A** Yes, sir.

7 **Q** How do you know a number of tons that are
8 generated from that farm; how is that number
9 generated?

10 **A** Those numbers would be coming back through our
11 contract hauler after he weighs the litter.

03:00PM

12 **Q** And he's required to weigh the litter when he
13 goes and picks it up?

14 **A** I understand that's part of the requirements
15 that he has, yes, sir.

03:00PM

16 **Q** What is the -- you go over to about the fourth
17 or fifth column that says percent. What is that
18 percent representative of?

19 **A** I'd have to familiarize myself with the sheet.
20 I'm not sure what those represent.

03:00PM

21 **Q** Who would you have to talk to to do that,
22 assuming you talked to somebody?

23 **A** Uh-huh. I'm trying to familiarize myself. It
24 looks -- it appears that the percentages would say
25 which watershed that litter wound up in or in the

03:01PM

1 other, and other could be -- in this particular case
2 could be the mushroom company.

3 Q All right. So if we look at just the top line
4 that says Illinois River?

5 A Yes, sir.

6 Q And we have Farm No. 20 and the 434 tons.
7 Based on this, we're going to see that no tons went
8 into Grand Lake watershed; is that your
9 understanding of this form?

10 A That's my understanding.

03:01PM

11 Q And then the next column where it says other,
12 296 tons went to other, we'll come back to that. 30
13 tons went into the Eucha-Spavinaw watershed; is that
14 the way you read this?

15 A That's the way I'm interpreting, yes, sir.

03:01PM

16 Q And 47 tons in Elk River and 61 tons in Honey
17 Creek, and those are respective percentages. Going
18 back to other, you said that could be the mushroom
19 company?

20 A Could be, could be.

03:02PM

21 Q I know there is a mushroom company. What is
22 the name of that company?

23 A I don't recall. It's located just out of
24 Miami, Oklahoma, though.

25 MR. ELROD: Is that J & M?

03:02PM

1 **A** Yeah, it is J & M.

2 MR. ELROD: J & M at the bottom of this.

3 MR. GARREN: J & M. You cheated and went
4 to the bottom.

5 **Q** Okay. Then how does the waste generated that 03:02PM
6 we see here that goes to J & M; how does it get
7 there?

8 **A** The litter is sold to a contract hauler and
9 the contract hauler in turn delivers it.

10 **Q** And then you're going to get a report from the 03:02PM
11 contract hauler on the weight and you generated this
12 summary from that data?

13 **A** Again, I haven't seen this summary report, but
14 I assume that's right.

15 **Q** Do you have -- other than the questionnaire 03:02PM
16 for the one we talked about, it sometimes gives some
17 clue but not a specific indication of where waste
18 went. Are there any other records besides that and
19 this summary that tells where waste is disposed of?

20 **A** Not to Simmons' knowledge. The grower would 03:03PM
21 have that on his farms forms.

22 **Q** So the managed farm, investor farms, Simmons
23 wouldn't have records of where that waste went?

24 **A** Yes.

25 **Q** You would? 03:03PM

1	A	Yes.
---	----------	------

2 Q I thought you said that earlier in your
3 testimony.

4 | **A** | I did.

5 Q Let's look at Exhibit No. 39, if you would. I 03:03PM
6 guess I could give it to you. You're familiar with
7 a company BMPs, Inc.?

8	A	Yes.
---	----------	------

9 Q Does Simmons have any board members on that
10 company? 03:04PM

11	A	Yes.
----	----------	------

12 Q Do you know who that is?

13 **A** I say we do.

14 MR. ELROD: It's me.

15 MR. GARREN: I was going to say it's legal 03:04PM
16 counsel.

17 Q All right. Have you ever seen this document
18 to your knowledge?

19 **A** Not this one, no, sir.

20 Q Simmons is a contributor to the 319 grant that 03:04PM
21 funds at least in part some of the waste being
22 hauled out of two watersheds; is that correct?

23 **A** That's correct.

24 Q And does Simmons contribute to both the
25 Illinois River watershed grant and the 03:04PM

1 Eucha-Spavinaw?

2 **A** It's my understanding we do, yes, sir.

3 **Q** Looking at -- do you know how long that grant
4 and that program has been in effect?

5 **A** I do not.

03:05PM

6 **Q** Do you know whether it's still operating?

7 **A** Yes.

8 **Q** And is it still operating?

9 **A** As far as I know, it is, yes, sir.

10 **Q** This report says that, in the first full

03:05PM

11 paragraph, last June, and this is Sheri Herron

12 speaking in this letter as I see it, last June I

13 discussed the status of hauling with several of the

14 attorneys representing the integrators, and it says

15 I wrote the following: The hauling grants are eking

03:05PM

16 along at a slower than desired pace. This is due to

17 lack of and/or inconsistent supply of litter, our

18 inability to control scheduling and pricing with

19 haulers and disgruntled buyers due to the

20 inconsistent supply and price; do you see that

03:05PM

21 statement there?

22 **A** Yes, sir.

23 **Q** Was Simmons advised of that information?

24 **A** Yes, sir.

25 **Q** And what did Simmons do to increase or --

03:05PM

1 well, first off, to increase the supply of litter
2 into this program?

3 A It's my understanding that our service techs
4 made sure in their conversations with the growers to
5 make sure that they knew that this program was
6 available to them.

03:06PM

7 Q Okay. Did Simmons do anything else to your
8 knowledge?

9 A Not to my knowledge, no, sir.

10 Q Look at the last page of this memo or letter.

03:06PM

11 At the top in that very first full sentence, from
12 discussions with different haulers, not all
13 cooperators on the grant, much of the litter they
14 move is going into adjacent state-designated
15 nutrient limited watersheds; do you see that?

03:06PM

16 A Yes, sir.

17 Q And was Simmons aware of this?

18 A Not that I'm aware of, no.

19 MR. McDANIEL: Is that your star on there,
20 Rick?

03:06PM

21 MR. GARREN: That is my star if it shows
22 up.

23 Q We talked earlier about what you knew to be
24 Simmons' participation in the watershed by
25 percentage of total houses. Is that the information

03:07PM

1 that was used to determine Simmons' contribution to
2 319 grants that BMP operates?

3 A Yes, I understand that's correct.

4 Q Has Simmons done anything to verify the

5 accuracy of the waste being moved from the

03:07PM

6 watersheds by BMPs, Inc.?

7 A Not that I'm aware of, no, sir.

8 Q Has Simmons been provided numbers of the waste

9 hauling occurring as a result of BMPs, Inc. program?

10 A Yes, sir.

03:08PM

11 Q Do you get them on a regular basis when you

12 have to pay your bills to this grant?

13 A We get them on a fairly regular basis.

14 Q Who reviews those records?

15 A Myself, my live production manager, Mark

03:08PM

16 Simmons.

17 Q And do you have confidence in the accuracy of

18 the numbers that are being reported?

19 A Yes, sir.

20 Q Do you have any information that would make

03:08PM

21 you believe they're not accurate?

22 A I'm not aware of anything, no, sir.

23 Q Are you aware of anybody that may have --

24 anyone else who may have questioned the accuracy of

25 the reporting of BMPs, Inc.?

03:09PM

1 **A** I'm not aware of anything.

2 **Q** Is Simmons aware?

3 **A** Not that I'm aware.

4 **Q** That would mean I as Simmons; right?

5 **A** I as Simmons.

03:09PM

6 **Q** When an investor -- let's back up. In the
7 '80's and '90's when Simmons had its own operations
8 and used contract haulers, did those contract
9 haulers actually clean the houses out themselves;
10 did they do -- did that process include putting it
11 in the trucks in order to haul it away?

03:09PM

12 **A** It was my understanding that there were some
13 of the contract haulers that had their own clean-out
14 crews, and there was some that actually did the
15 hauling and there were independent separate crews
16 for clean out. It was a combination of both.

03:10PM

17 **Q** Okay, and so Simmons didn't have its own
18 employees do the clean-out?

19 **A** That's correct.

20 **Q** What does Simmons expect or require of its
21 growers in the way of timing for clean out of the
22 poultry barns?

03:10PM

23 **A** Well, it's changed over a number of years.
24 Presently we would like the growers to clean out on
25 an annual basis.

03:11PM

1 Q What was it before that?

2 A At one point in time it was a situation where
3 they tried, the growers tried to get longer use out
4 of poultry litter and it would depend on the
5 condition of the litter itself.

03:11PM

6 Q So it could go two years as opposed to one
7 generally?

8 A Yeah.

9 Q The -- and in between there would be what we
10 call cake-outs occurring?

03:11PM

11 A Decaking, yes, sir.

12 Q Decaking, and those would result in having
13 some but not all of it removed from the barn?

14 A A large percentage of it, yes, sir.

15 Q Does Simmons require its growers to add
16 stacking sheds for poultry waste removed from barns?

03:11PM

17 A On any new house construction, that is part of
18 the specifications that we do, to require a stacking
19 shed.

20 Q Does Simmons today know how many farms that
21 grow for it that do not have stacking sheds?

03:12PM

22 A No.

23 MR. GARREN: We can break now.

24 VIDEOGRAPHER: We are now off the Record.

25 The time is 3:12 p.m.

03:12PM

1 (Following a short recess at 3:12 p.m.,
2 proceedings continued on the Record at 3:23 p.m.)

3 VIDEOGRAPHER: We are back on the Record.
4 The time is 3:23 p.m.

5 Q Mr. Murphy, let's look back at Exhibit 2 for a 03:23PM
6 little bit and I want to -- it's a contract dealing
7 with broilers. Maybe you can answer this question
8 off the top of your head. Do you require your
9 growers to, by contract, obey all biosecurity rules
10 and regulations of Simmons? 03:24PM

11 A I don't recall biosecurity being in there as
12 far as in the contract itself.

13 Q All right.

14 A Without reviewing it.

15 Q But there are times where biosecurity rules 03:24PM
16 and regulations are promulgated and set out to the
17 growers by Simmons; is that a fair statement?

18 A I think that's correct, yes, sir.

19 Q What if they don't follow those biosecurity
20 rules and regulations; what does Simmons do? 03:24PM

21 A I don't know that we've had an incident where
22 someone hasn't done it that we could prove that
23 there was a breach in the biosecurity.

24 Q Okay, and if it were to occur, what kind of
25 action would you take against a grower? 03:24PM

1 **A** It would depend on what the breach was. If it
2 was a breach that started a particular disease,
3 depends on the seriousness of that disease.

4 **Q** Are -- the purpose of those rules for
5 biosecurity is really to protect the birds, isn't
6 it? 03:25PM

7 **A** Protect the birds and the grower's income.

8 **Q** All right. The rules that are in effect, or
9 at least the ones that I've seen, aren't designed to
10 protect human beings from any disease that might 03:25PM
11 occur as a result of a breach in biosecurity?

12 **A** Diseases that we've had within northwest
13 Arkansas haven't been human-related diseases.

14 **Q** So you agree with me then that there's nothing
15 in effect in the biosecurity rules that would 03:25PM
16 protect humans at this time?

17 **A** Depending on the disease.

18 **Q** Well, tell me what disease exists that you put
19 rules and regulations regarding biosecurity for
20 protection of humans. 03:25PM

21 **A** You have your standard rules and regulations
22 that would apply as far as who comes and goes on
23 those farms. If avian influenza hit, there's a
24 totally different set of rules that apply.

25 **Q** All right. So until and unless you hear 03:26PM

1 there's some influenza, those rules aren't in place?

2 **A** Those particular rules, which would be federal
3 and state, would be out of the integrator's hands at
4 that time. Those rules aren't in place right now.

5 **Q** Now, you do require the growers to follow all 03:26PM

6 applicable laws and regulations regarding --

7 including -- well, I'm trying -- it's Paragraph G

8 here. Let's just read it. Grower shall follow all

9 applicable rules and regulations, including the

10 Federal Insecticide, Herbicide, Rodenticide Act of 03:26PM

11 '47, 1947, as well as applicable FDA, USDA, state

12 and EPA regulations. What state regulations are you

13 referring to in this contract?

14 **MR. ELROD:** Object to form.

15 **A** State regulations would be those regarding 03:27PM

16 their nutrient management plans.

17 **Q** And that means state laws and regulations

18 would be the nutrient management plan; is that all?

19 **A** As dictated through the nutrient management

20 plans, yes, sir. 03:27PM

21 **Q** Okay. Are those applicable laws and

22 regulations of the state given to a grower that

23 grows for Simmons so they know what they are?

24 **A** As far as their nutrient management plans they

25 get, yes, sir. 03:27PM

1 Q So you're telling me all the rules and
2 regulations for a poultry growing operation are
3 contained in the nutrient management plan?

4 A I don't know that all of them are.

5 Q That's my point. Any rules, regulations 03:28PM
6 created by the State, either Arkansas or Oklahoma,
7 does Simmons take and make the effort of giving
8 those rules and regulations to each of its growers?

9 A Part of their nutrient management plan is that
10 they have to attend so many hours of class, which 03:28PM
11 that is part of that curriculum.

12 Q Okay. I'm going to ask my question again.
13 Does Simmons provide copies of the state regulations
14 and laws to its growers?

15 A No, sir. 03:28PM

16 Q What follow-up does Simmons provide to
17 determine whether those state laws and regulations
18 are being complied with by their contract growers?

19 A Service techs being on the farm from time to
20 time, if there's obvious issues as far as the way 03:29PM
21 litter may be stacked outside of a house, would
22 notify management and appropriate actions would be
23 taken. As far as us actually going on the farm and
24 checking the -- if there's litter being spread on
25 that farm, I don't think it's right for Simmons or 03:30PM

1 any integrator to be able to go on private property
2 of an individual and be the corporate policeman for
3 it.

4 Q Well, the contract does give you the right to
5 make inspections of the premises, though, doesn't
6 it? 03:30PM

7 MR. McDANIEL: Object to the form.

8 A Those premises primarily would be the roadways
9 going into the farm and the dwelling and the
10 chickens itself. It does not give us, in my 03:30PM
11 opinion, the right to go all over that individual's
12 farm.

13 Q What records does -- a contract calls for the
14 right of Simmons to review records. What records
15 does Simmons review? 03:31PM

16 A Be anything as far as mortality sheets, those
17 type of things.

18 Q I want you to be more specific. Other than
19 mortality sheets, what records would Simmons review?

20 A I don't know of any. 03:31PM

21 Q The area of Inquiry No. 15, says knowledge or
22 awareness of runoff/discharge/release of poultry
23 waste or any constituents thereof of land or
24 locations in which poultry waste has been stored,
25 spread or upon or disposed of. Are you the 03:31PM

1 designated representative for Simmons to speak on
2 that area of inquiry?

3 A Yes, sir.

4 Q And what have you done to prepare yourself on
5 that regard? 03:31PM

6 A Other than visiting with counsel, nothing.

7 Q You've looked at no records; correct?

8 A I've looked at the sheet that has the recap of
9 the questionnaire.

10 Q So is there -- is that the document we've 03:32PM
11 looked at here today that is several questionnaires
12 or is there another recap of those documents that
13 you looked at?

14 A We have a recap.

15 Q So you have a summary form? 03:32PM

16 A Yes, sir.

17 Q And that record hadn't been produced to us.
18 How is it kept?

19 A Basically it's a form that I look at that
20 tells me what growers have applied for a nutrient 03:32PM
21 management plan or not.

22 Q Is it limited to that inquiry only?

23 A As far as inquiries, yes.

24 Q So is there anything else on that recap that
25 you're looking at having to do with any form of 03:32PM

1 waste disposal, handling or storage?

2 **A** It would be a recap of the questionnaire,
3 which would include the amount of litter that would
4 have been disposed of for that particular grower.

5 **Q** Is that generated by a computer? 03:33PM

6 **A** After input, yes.

7 **Q** Does that mean you have it available to you
8 before input?

9 **A** Only an individual basis. I go through every
10 one of them. 03:33PM

11 **Q** And so that recap is generated how often?

12 **A** At least quarterly.

13 **Q** We talked earlier about the Arkansas
14 Department of Pollution Control and Ecology, which
15 now is known as Arkansas DEQ or Department of
16 Environmental Quality. Are you familiar with a
17 person by the name of Martin Maner in the water
18 quality division there? 03:33PM

19 **A** No, sir, I'm not.

20 **Q** Never heard of him? 03:34PM

21 **A** Last name again?

22 **Q** Maner, Martin Maner?

23 **A** No, sir.

24 **Q** I think just before he retired just recently
25 he was in charge of the water quality division 03:34PM

1 there. You've not heard of him or met him?

2 **A** No, sir.

3 **Q** So are you talking personally, Mr. Murphy, or

4 are we talking Simmons, the company, having

5 awareness of the person who is involved with water

03:34PM

6 quality for the State of Arkansas?

7 **A** I'm not aware, as of Simmons, anyone having

8 any discussion with him.

9 **MR. ELROD:** Are you saying you're speaking

10 for yourself or the company?

03:34PM

11 **A** For the company.

12 **MR. ELROD:** For the company?

13 **A** Yes.

14 **Q** Let me hand you a document that's been marked

15 Exhibit 17, one that's authored by Martin Maner in

03:34PM

16 1988. Let me ask a couple of questions about some

17 of the statements he makes in there and ask if

18 Simmons agrees or disagree. There's a statement on

19 the second page, nitrogen and phosphorus should be

20 applied at a rate not greater than what cover plants

03:35PM

21 can assimilate. Does Simmons agree with that

22 statement or not?

23 **A** We agree with it to the point that I

24 understand studies are still underway to determine

25 that.

03:35PM

1 Q And does Simmons know that chicken manure has
2 a higher phosphorus to nitrogen ratio than is
3 utilized by plants?

4 MR. McDANIEL: Object to form.

5 A I don't know. 03:35PM

6 Q And I meaning Simmons?

7 A Simmons.

8 Q Does Simmons know the ratio of phosphorus to
9 nitrogen contained within chicken manure?

10 MR. McDANIEL: Object to the form. 03:36PM

11 MR. ELROD: I object to form, too.

12 A Not that I'm aware of, no.

13 Q Looking at the third page at the top, the
14 paragraph beginning under -- with the word
15 groundwater monitoring as reported in Arkansas Water 03:36PM
16 Resource Research Center Publication No. 129,
17 underscored, land use effects on groundwater quality
18 in carbonate rock terrain, end of underscoring,
19 1987, showed that nitrates are significantly higher
20 in areas receiving confined animal waste as compared 03:37PM
21 to a control area. Is this the concern that the
22 industry, poultry industry had back in the late
23 '80's?

24 MR. McDANIEL: Object to the form.

25 MR. ELROD: Object to form. 03:37PM

1 **A** This is one I speak personally on. I'm not
2 sure. As far as the company, I'm not sure on the
3 company as well. I know nitrates was an issue
4 during that time period.

5 Q Okay, and you know that personally then as
6 opposed to Simmons; is that what you are testifying
7 to today?

8 **A** Yes, uh-huh.

9 Q Is there any reason why Simmons wouldn't know
10 that if you knew it?

11 **A** Probably would have, yes.

12 MR. ELROD: What is it that they knew,
13 Rick?

14 MR. GARREN: That the statement here, that
15 nitrates are significantly higher in areas receiving
16 confined animal waste as compared to a control area.

17 Q Let's look back at the second page. In the
18 first full paragraph on the second page, the last
19 sentence, it says general guidelines for phosphorus
20 are about 40 pounds per acre per year and the
21 current application rate is probably in excess of 80
22 pounds per acre per year. Do you see that?

23 **A** Yes, sir.

24 Q Does Simmons have any information or knowledge
25 to refute that statement?

1 MR. McDANIEL: Object to the form.

2 A That is still unclear because tests are still
3 being -- ongoing by both states in regard to what
4 the appropriate land application rate is.

5 Q Okay, but this is -- says as a matter of fact 03:39PM
6 that the current application rate is probably in
7 excess of 80 pounds per acre.

8 MR. McDANIEL: What's the question?

9 A What are you asking?

10 Q Is there any information that Simmons has to 03:40PM
11 dispute that statement?

12 MR. McDANIEL: Object to the form, no
13 foundation.

14 A This is one study. I don't have a good
15 answer. 03:40PM

16 Q Let me hand you Exhibit 11. Simmons operates
17 in southwest Missouri, does it not or has?

18 A Yes, sir.

19 Q Is Simmons knowledgeable or familiar with the
20 Missouri Resource Review that we're looking at here, 03:41PM
21 this publication, not necessarily this specific one
22 but this publication?

23 A I'll speak personally. I don't know.

24 Q So you don't know --

25 A I don't know if Simmons does or not. 03:41PM

1 Q On Page 63 of this document under the
2 paragraph headed poultry plans, it says to ensure
3 that poultry waste is managed properly, Tracy Mehan,
4 department of natural resource director, formed the
5 poultry task force. The nine-member task force is
6 working with the poultry industry, the Missouri
7 Department of Agriculture, University of Missouri
8 extension service and the U.S. Department of
9 Agriculture Soil Conservation Service to develop
10 educational materials for poultry producers and
11 possible new regulations for disposing of poultry
12 waste. Do you know whether Simmons was included in
13 that reference of the poultry industry for that task
14 force?

03:41PM

15 A I would have to find out. I don't know.

03:42PM

16 Q Who would you ask to find out whether or not
17 they participated in that Missouri task force?

18 A Probably ask Mark Simmons.

19 Q Let me hand you what's been marked as Exhibit
20 12, sir. Is Simmons familiar with the governor's
21 task force on animal waste issued in January of
22 1993, that governor being Governor Bill Clinton?

03:42PM

23 A Yes, sir.

24 Q Looking at Page 1619 Bates stamped, it appears
25 we see Claude Rutherford's name again as the

03:43PM

1 chairman on the voluntary approach evaluation
2 committee; do you see that?

3 A Yes, sir.

4 Q All right. Were you with the company when Mr.
5 Rutherford was at the company?

03:43PM

6 A For a short time period, yes, sir.

7 Q And do you recall Mr. Rutherford or others
8 speaking about this task force at Simmons?

9 A I remember his participation in it, yes, sir.

10 Q And I believe the -- Page 1626 has the
11 problems -- it says the committee identified the
12 following problems that these wastes caused, and it
13 talks about aesthetics, physical, including
14 environmental degradation and then three talks about
15 institutional arrangements. The recommendation of
16 this committee was the best way, and I'll quote, the
17 best way to do this is through voluntary
18 participation rather than a regulatory approach; do
19 you see that, the very last sentence?

03:43PM

03:44PM

20 A Yes, uh-huh.

03:44PM

21 Q Did Simmons have, other than through Claude
22 Rutherford, any opinion or direction in the way this
23 committee was handled?

24 A All I know is that Mark Simmons was dedicated
25 enough to addressing any potential issues that he

03:44PM

1 gave Claude Rutherford, who was a full-time employee
2 at the time. This was his job to do.

3 Q Okay, and was this Simmons -- did Simmons
4 share the same opinion that a voluntary
5 participation rather than a regulatory approach was 03:45PM
6 the best way to take care of problems and issues
7 relating to poultry waste?

8 A I think that's the case. I think that's --
9 could be pointed out by some things that we've done
10 regarding the environment and our impact on the 03:45PM
11 environment.

12 Q This report is January 5th, 1993; you see
13 that?

14 A Yes, sir.

15 Q Let's look at Exhibit 13, if you would. This 03:45PM
16 is a report by Roland Geddes, G-E-D-D-E-S, of the
17 natural resource management -- as a natural resource
18 management consultant. Do you know that name?

19 A No, sir.

20 Q This report was written in April of 1992; do 03:45PM
21 you see that?

22 A Yes, sir.

23 Q And based on -- it's an evaluation of the
24 Arkansas agricultural non-point source water
25 pollution prevention and abatement program; do you 03:45PM

1 see that?

2 **A** Yes, sir.

3 **Q** So in 1992 he is writing this report. On Page

4 1652, the first page midway down in the second

5 paragraph where it starts in the middle of that

03:46PM

6 paragraph, this report also states agricultural --

7 agriculture continues to be the single largest

8 source of NPS, non-point source pollution problems

9 in the nation. In Arkansas the most prevalent NPS

10 pollutants are sediment, bacteria and nutrients,

03:46PM

11 both nitrogen and phosphorus; do you see that?

12 **A** Yes.

13 **Q** All right. If you'll go over to Page 1656, at

14 the bottom where we have the heading regulation, it

15 reads, and tell me if I read it wrong, effective NPS

03:47PM

16 programs will be a mixture of voluntary and

17 regulatory controls. NPS here is non-point source;

18 correct?

19 **A** Uh-huh, yes, sir.

20 **Q** It goes on to say, while voluntary elements,

03:47PM

21 NPS control in many cases cannot be achieved through

22 purely voluntary efforts; do you see that?

23 **A** Yes, sir.

24 **Q** Do you have any idea whether or not Claude

25 Rutherford and his committee undertook to consider

03:47PM

1 these regulations recommendations made by this
2 consultant in 1992?

3 MR. McDANIEL: Object to the form.

4 MR. ELROD: Object to form.

5 A It would be strictly speculation. I'm not 03:47PM
6 sure what they included.

7 Q All right, and Simmons you say, at least
8 you're not familiar with this Mr. Geddes?

9 A I'm not.

10 Q You mean personally? 03:47PM

11 A Personally.

12 Q Now, we've seen that in 1993 after the task
13 force reported that a voluntary program was
14 recommended, but as I recall, looking at your
15 contracts, it wasn't until 1996 that Simmons 03:48PM
16 required that the growers follow best management
17 practices. Can you explain to me why there was a
18 wait of some three years to have that?

19 A I can't explain the delay in that. Certainly
20 doesn't reflect our thinking as far as trying to 03:48PM
21 protect the environment.

22 Q Exhibit 14, this is a document that came from
23 Claude Rutherford's deposition in the City of Tulsa
24 case, and it purports to be handwritten notes of the
25 meeting in November of 1997 where several people 03:49PM

1 were present, including Archie Schaffer of Tyson,
2 Mark Simmons, Don Allen of the Oklahoma Poultry
3 Federation; do you know his name, Mr. Allen?

4 **A** Yes.

5 **Q** Do you know him personally? 03:49PM

6 **A** I met him years and years ago.

7 **Q** Also Claude Rutherford was at this meeting
8 along with Mike Pruitt along with representatives of
9 City of Tulsa. What is of interest is near -- on
10 the bottom half of the first page there is a 03:49PM

11 handwritten note, Mark, I believe that refers to
12 Mark Simmons, and it refers to a statement he makes.
13 We don't disagree there's a phosphorus problem -- we
14 don't disagree there's a problem with phosphorus in
15 the Eucha watershed; do you see that? 03:49PM

16 **A** Yes, sir.

17 **Q** So clearly at least in 1997 Mr. Simmons
18 recognizes that there's a problem with phosphorus,
19 doesn't he?

20 **MR. ELROD:** Object to form. 03:50PM

21 **A** I don't know that Mark ever received this.

22 **Q** Well, he was at the meeting. This is a
23 statement attributed to him.

24 **A** It looks like it's a note written to Mark.

25 **Q** If he made that statement, it would be 03:50PM

1 reflective of his acknowledgment that at least in
2 the Eucha watershed there was a problem in the
3 phosphorus; correct?

4 MR. GRAVES: Object to the form.

5 MR. BOND: Object to the form.

03:50PM

6 A He would have acknowledged it, yes, sir.

7 Q If that were the case, what did Simmons do
8 with regard to the Illinois River watershed in
9 regard to phosphorus problems that had been reported
10 there?

03:50PM

11 MR. McDANIEL: Object to the form.

12 A This market has been very proactive as far as
13 encouraging our growers to do the BMPs, as far as
14 getting nutrient management plans.

15 Q Do you know specifically what they did as a
16 result of his acknowledgment of the problem in
17 Eucha, though, to address problems in the Illinois
18 River watershed?

03:51PM

19 A We reflected some of our same thinking as far
20 as Eucha and the possibilities that that might be
21 taking place in the Illinois.

03:51PM

22 Q I appreciate your thinking about it. I guess
23 what I'm asking is, what did you in fact do about
24 that thinking?

25 A Well, Mark has made contributions to the

03:51PM

1 Illinois River Watershed Partnership, of which he
2 was a strong supporter in establishing that
3 organization to begin with.

4 Q Anything else?

5 A Not for now.

03:52PM

6 Q When did the company, Simmons, first know
7 there was a problem with phosphorus in the Illinois
8 River watershed?

9 MS. BRONSON: Object to form.

10 A I don't know specifically.

03:52PM

11 Q Is there somebody in the company that would
12 know better than you at this point about when
13 Simmons knew there were problems with excessive
14 phosphorus in the watershed?

15 MR. ELROD: Object to the form.

03:52PM

16 MR. McDANIEL: Object to form.

17 Q Let me restate it. Is there someone better in
18 your company that would know when there was excess
19 phosphorus in the Illinois River watershed for the
20 first time?

03:52PM

21 MR. McDANIEL: Object to form.

22 MR. ELROD: Object to form.

23 A Probably Mark Simmons could tell you when
24 there was discussion in regard to phosphorus.

25 Q Is Simmons a member of the National Poultry

03:53PM

1 Federation?

2 **A** Yes.

3 **Q** It's been a member for some time?

4 **A** As far as I know, yes.

5 MR. ELROD: Is that the right name, 03:53PM

6 National Poultry?

7 **Q** National Poultry Federation?

8 **A** I'm not aware of the National Poultry

9 Federation.

10 **Q** Which one are you aware of; the one that used 03:53PM

11 to be Arkansas and now is U. S. Poultry Federation?

12 **A** Poultry Federation.

13 **Q** Used to be Arkansas -- there used to be an

14 Arkansas Poultry Federation; correct?

15 **A** That's correct. 03:53PM

16 **Q** Now named Poultry Federation?

17 **A** That's correct.

18 **Q** And you're not familiar with one called the

19 National Poultry Federation?

20 MR. ELROD: It's now called the National 03:53PM

21 Chicken Council, is it not?

22 **A** There's NCC.

23 MR. ELROD: Yeah. I think the National

24 Chicken Council used to be called the National

25 Poultry Federation, but I could be wrong. 03:53PM

1 Q Let's look again at Exhibit 10 and the 2007
2 website material, which would be the last two pages.

3 A Too many exhibits.

4 Q There are. Actually you can go to the last
5 page of this and, again, understanding what you have 03:55PM
6 said Simmons' concern is with regard to the
7 environment, it has a place on its website where it
8 talks about partners and possibilities, and it lists
9 there as part of that your growers or it says our
10 growers; do you see that statement? 03:55PM

11 A Yes, sir.

12 Q And under our growers it says, and I quote,
13 Simmons' growers are critical to the company's
14 success; do you agree with that statement?

15 A Yes, sir. 03:55PM

16 Q It also then says as business -- as a business
17 partner to our growers, we support them in
18 implementing the industry's best practices to
19 achieve the best results. Do you consider them
20 partners to you for purposes of implementing these 03:56PM
21 best management practices, sir?

22 MR. ELROD: Object to the form.

23 A We're certainly partners in the sense that
24 they're contract growers.

25 Q All right, just what is it that you do to 03:56PM

1 support them in implementing the best practices to
2 achieve the best results?

3 **A** Tried to give them guidance in the way that
4 they're managing their flocks, which in turn will
5 lead to better litter quality. We try to help them
6 as far as the ventilation practices that they have,
7 as far as the emissions that could possibly be
8 coming out of the poultry farm.

03:56PM

9 **Q** Does it also extend, sir, to their potential
10 risk in using poultry waste generated by Simmons'
11 birds as a possible harm to the environment?

03:56PM

12 **A** Again, I'll have to go back and say, number
13 one, it's litter and not waste, and I have not seen
14 anything that would indicate that there is any
15 health-related concerns from poultry litter.

03:57PM

16 **Q** Likewise, sir, do you consider it then
17 support -- do you consider it important then to
18 provide support in their controlling the disposition
19 of the waste product generated by the bird in a
20 manner so as to protect the environment?

03:57PM

21 **MR. McDANIEL:** Object to the form.

22 **A** First of all, it's their litter, and I don't
23 control what they do with their litter. It is a
24 form of income to them, which I shouldn't have
25 control over, and they abide by the state's nutrient

03:57PM

1 management plans which are dictated to the point
2 that it protects the environment.

3 Q Mr. Murphy, speaking for and on behalf of
4 Simmons Foods, can you think of any other major
5 industry, such as the poultry industry, that doesn't
6 take responsibility for waste produced from its own
7 product, in this case the bird?

03:58PM

8 MR. ELROD: Object to the form.

9 A Again, it's not waste; it is litter. I don't
10 consider litter to be a waste in that it has a value
11 and the value has been, as in the past, an actual
12 income to the grower.

03:58PM

13 Q Well, would you agree with me, though, as
14 you've said earlier, if there is more being created
15 and spread than the land can assimilate, that
16 creates a risk to the environment?

03:58PM

17 MR. BOND: Object to the form.

18 A That's the reason that the nutrient management
19 plan is put together is to keep that from happening.

20 Q Let's flip back a page in this website,
21 Exhibit 10, and if we look over in the right-hand
22 side again, it says we are an industry leader in
23 doing what's right for the environment; do you see
24 that statement?

03:59PM

25 A Yes, sir.

04:00PM

1 Q As an industry leader, why won't Simmons take
2 more responsibility and help the grower do with what
3 -- do with the waste which would protect the
4 environment better than they have?

5 MR. GRAVES: Object to the form, 04:00PM
6 argumentative.

7 MR. McDANIEL: Object to the form.

8 A Again, it's litter and it's a source of income
9 to them and I don't think it's right for Simmons or
10 any other integrator to come in and dictate to a 04:00PM
11 grower what he's going to do with his income.

12 Q So it's okay for Simmons to sit by and watch
13 that this waste that their birds are creating
14 because they continue to increase the amount of
15 birds in this watershed, to dump, cause to be dumped 04:00PM
16 more poultry waste and/or litter, if you want to use
17 that term, on the land, and you recognize these
18 articles we've read here today that shows phosphorus
19 in excess is creating an environmental water quality
20 issue, Simmons will do nothing about that as a 04:01PM
21 leader in the industry?

22 MR. GRAVES: Object to the form, compound,
23 argumentative, and you're asking him to testify
24 about the industry, and he's here for Simmons.

25 MR. ELROD: Object to the form. 04:01PM

1 Q You can answer to the best of your knowledge,
2 sir.

3 A Answer to the best of my knowledge.

4 MR. McDANIEL: Same objection.

5 A Again, Simmons is not going to go in and 04:01PM
6 dictate to a grower how he should manage his income.

7 Q Don't they already do that?

8 A No, we don't. All this is regulated by the
9 states.

10 Q I'm sorry. Go ahead. I thought you were 04:01PM
11 through.

12 A That's okay.

13 MR. ELROD: He's just getting started.

14 A That's all right. Go ahead.

15 MR. ELROD: Go ahead. Finish. 04:01PM

16 A These are regulated by the states for this
17 type of a situation. If things need to be changed,
18 state regulations need to be changed, but Simmons is
19 backing our growers and asking them to be
20 participative and make sure that they have nutrient 04:02PM
21 management plans on hand and are following those.

22 Q All right. Don't you effectively dictate what
23 these growers make in the way of income by
24 establishing what birds they get, how long they can
25 keep them, what feed they're going to get, what 04:02PM

1 medications you're going to give them and you
2 establish the price that you pay, do you not, sir?

3 MS. BRONSON: Objection.

4 MR. McDANIEL: Seems to me we're slipping
5 off into closing argument. 04:02PM

6 MR. GARREN: Just make your objection,
7 please, and let him answer the question.

8 MR. McDANIEL: These are improper
9 questions. This is not fair.

10 MR. GARREN: Make your objection and not 04:02PM
11 leading in nature.

12 MR. GRAVES: Do we need to call the judge
13 because these are improper questions?

14 MR. GARREN: Let's call the judge.

15 MR. McDANIEL: Settle down. 04:02PM

16 MR. GARREN: Read back the question so we
17 have it for the Record.

18 (Whereupon, the court reporter read
19 back the previous question.)

20 MR. GRAVES: And I'll object to the 04:03PM
21 compound nature of the question.

22 Q Can you answer that question for Simmons
23 Foods, please?

24 MR. McDANIEL: Object to the form.

25 A We don't force any integrator to grow chickens 04:03PM

1 for Simmons. It is a mutually agreed upon contract
2 that we enter into. We don't force anybody to grow
3 chickens for Simmons.

4 Q All right, but they don't negotiate the
5 contract, do they?

04:03PM

6 A We don't force anyone to grow chickens for
7 Simmons.

8 Q This website on the left-hand side says taking
9 a proactive stance, we have voluntarily adopted
10 non-phosphorous soaps at our truck wash facility; do
11 you see that statement?

04:04PM

12 A Yes, sir.

13 Q How is that a proactive stance?

14 A We could be continuing to use it.

15 Q Okay, and what's the purpose of not using it?

04:04PM

16 A Making sure that we're doing our part. Should
17 there be a problem, we're doing our part to be a
18 part of the solution.

19 Q So you're still not convinced that phosphorus
20 is part of the problem; is that what Simmons is
21 saying?

04:04PM

22 A I'm not sure that -- I'm not sure that Simmons
23 is a -- how big -- I'm not sure how much of a
24 problem is poultry related.

25 Q But you recognize that a phosphorus soap must

04:04PM

1 have some effect; is that what you're saying?

2 **A** Just like a car wash in any town has the same
3 effect, just like your wife putting detergents in
4 the washing machine, yes, sir, there is an impact.

5 **Q** But Simmons still isn't convinced there's an
6 impact from the poultry waste creating phosphorus in
7 excess that runs off into the waters of the state of
8 Oklahoma?

04:05PM

9 MR. GRAVES: Object to form, asked and
10 answered.

04:05PM

11 MR. McDANIEL: Object to the form.

12 **A** The question is what is in excess. I don't
13 think anyone denies there's phosphorus in the ground
14 there.

15 MR. BOND: Object to the form.

04:05PM

16 **Q** Since you have contracts with your growers
17 that you've admitted are not negotiated, what is
18 keeping Simmons from putting a term in there about
19 how waste can be better disposed of in order to
20 protect the environment as a good steward Simmons
21 claims to be?

04:05PM

22 MS. BRONSON: Object to the form.

23 MR. GRAVES: Object to the form.

24 MR. McDANIEL: Object to the form, assumes
25 facts not in evidence.

04:05PM

1 **A** First of all, I haven't admitted that our
2 contracts aren't negotiated. Secondly, again, it's
3 not our litter. It's an income for them. They have
4 access to literature of other uses of poultry
5 litter. 04:06PM

6 **Q** Who provides it to them?

7 **A** I don't know the exact content of the
8 educational process on the nutrient management
9 plans, but we have growers that talk to growers, to
10 each other, similar to our grower that's north of 04:06PM
11 the plant up there. We've had numerous meetings
12 where a lot of the growers have come in to view
13 exactly what is going on.

14 **Q** Is it fair to say that Simmons hasn't provided
15 them these kind of articles and materials you've 04:06PM
16 been referring to to educate them?

17 **A** We have not supplied any materials like that,
18 no, sir.

19 **Q** Let's back up. You made a statement that you
20 said you have not agreed that Simmons doesn't 04:06PM
21 negotiate this contract. Is that your statement
22 now?

23 **A** Yes, sir.

24 **Q** You mean to tell me that earlier today you
25 didn't say Simmons doesn't negotiate these contracts 04:07PM

1 with its grower?

2 **A** I'm not sure exactly what I did say earlier
3 this morning, but I can tell you that it's up to the
4 growers as to whether he wants to enter into the
5 contract or not.

04:07PM

6 **Q** They don't negotiate the terms of that
7 contract, though, do they?

8 **A** No, sir.

9 **Q** Okay.

10 **A** I don't disagree with that.

04:07PM

11 **Q** You disagree with it?

12 **A** I don't disagree with that.

13 **Q** Let's look at Exhibit 16. Have you ever seen
14 a manure management plan for water quality created
15 by the Washington County Soil and Conservation
16 District?

04:07PM

17 **A** Not that I can recall.

18 **Q** Is there anyone in Simmons -- are you talking
19 personally now or are you talking about Simmons, the
20 company?

04:08PM

21 **A** Personally.

22 **Q** Do you know whether Simmons is familiar with a
23 Washington County Soil and Water Conservation
24 District manure management plan for water quality?

25 **A** I don't think so but I would have to ask Joe

04:08PM

1 Earney.

2 Q Looking at page Bates number 18932 and it
3 talks in the middle of that page about nutrient
4 balance. Do you see that little schedule there?

5 A Yes, sir.

04:08PM

6 Q It has a column for recommended application
7 rate and actual application rate. Do you see that?

8 A Yes, sir.

9 Q And for -- it has two grasses, fescue and
10 Bermuda, listed there, and for this particular plan,
11 it shows that the recommended rate is lower than the
12 actual rate. Do you see that?

04:08PM

13 A Yes, sir.

14 Q And in the status column on the right-hand
15 side it shows that in both of those situations
16 dealing with phosphorus or P205, phosphate, each one
17 of those in actual application rate is excess; do
18 you see that term?

04:09PM

19 A Yes, sir.

20 Q Based on that information, would you believe
21 then that these plans are designed to provide
22 phosphorus at an agronomic rate that a plant can
23 assimilate it?

04:09PM

24 MR. McDANIEL: Object to the form, no
25 foundation.

04:09PM

1 MS. HILL: Object to the form.

2 A I'm not familiar with the study to know.

3 Q Okay, but you've said following a nutrient
4 management plan because it's drafted by the State,
5 it should protect the environment; did you not say
6 that earlier for Simmons?

04:09PM

7 A If the current nutrient management plans are
8 similar to this, yes, sir, I would say that.

9 Q Looking at the next page, 18933, Paragraph No.
10 1, it says base nutrient applications on a soil test
11 in the past three years. Then it goes on to say
12 apply only amounts needed to reach a reasonably
13 expected yield for the crop or forage being
14 fertilized. Do you understand what that means?

04:10PM

15 MR. ELROD: Object to form.

04:10PM

16 A I think so.

17 Q You do?

18 A I think so.

19 Q Tell me what you believe it to mean.

20 A You shouldn't apply more either commercial
21 fertilizer or litter to the land than the plants can
22 actually take up.

04:10PM

23 Q Okay, and looking at Page 18935 under animal
24 waste utilization guidelines -- I'm sorry. Let's go
25 back to that statement. Does the Simmons company

04:11PM

1 agree with that statement, apply only amounts needed
2 to reach a reasonably expected yield for crop or
3 forage being fertilized?

4 MR. ELROD: Object to form.

5 A As pointed out in the nutrient management 04:11PM
6 plans, yes, sir.

7 Q Simmons does agree then?

8 A Yes, sir.

9 Q Does -- looking at 18935 then, this, by the
10 way, appears to be a draft version in September of 04:11PM
11 1990 that we're looking at, but it says animal waste
12 can pollute ground and surface water by increasing
13 the content of nitrates, phosphates, bacteria and
14 organic matter in the water; do you see that
15 statement, the very first paragraph at the top? 04:11PM

16 A Yes.

17 Q Does Simmons agree with that statement, that
18 it's true?

19 A If it's not applied to the surface properly.

20 Q Okay. It doesn't say that here. It just says 04:12PM
21 they can pollute ground and surface water. It
22 doesn't say anything about application, does it?

23 A Simmons doesn't agree with it then.

24 MR. ELROD: Let's be fair, Rick. This is
25 talking hypothetically. 04:12PM

1 MR. GARREN: How do you know that?

2 MR. ELROD: It says animal waste can
3 pollute ground and surface water. It's not
4 addressing the Illinois River watershed or any other
5 specific watershed. It's simply stating something 04:12PM
6 we all know. So --

7 MR. GARREN: I'm not going to get into an
8 argument with you about what physics can or cannot
9 do. So your objection has been made.

10 MR. ELROD: All right. 04:12PM

11 Q What studies has Simmons itself performed or
12 had performed for it to inform it about the effects
13 of nitrogen or phosphorus and/or bacteria from
14 spreading poultry waste on the ground?

15 A As far as spreading poultry litter, we've been 04:13PM
16 dependent on the studies by the states.

17 Q And/or universities?

18 A Yes, sir.

19 Q All right. So Simmons has not undertaken
20 itself any kind of study or a contract that somebody 04:13PM
21 on its behalf to undertake a study to determine
22 whether or not nitrogen, phosphorus and bacteria can
23 be harmful to the environment when spread on the
24 land?

25 A No, sir. 04:14PM

1 Q No, sir, you haven't taken up those studies;
2 is that what you mean?

3 A That's correct.

4 Q All right. Moving to an area of inquiry, No.

5 17, let me read it to you. The environmental and 04:14PM

6 human health effects/impacts of

7 runoff/discharge/release of poultry waste or any

8 constituents thereof from land or locations under

9 which poultry waste has been stored, spread on or

10 disposed of. You are the designee of this Simmons 04:14PM

11 Foods to speak to this subject; correct?

12 A Yes, sir.

13 Q What have you done to prepare yourself for

14 this subject?

15 A Had a meeting with counsel only. 04:15PM

16 Q So you've not looked at any documents either;

17 is that correct?

18 A That's correct.

19 Q And you've not spoken to anyone else but

20 counsel? 04:15PM

21 A That's correct.

22 Q Does Simmons have an opinion whether there

23 exists any environmental and human health effects

24 resulting from runoff or release of poultry waste or

25 any constituents thereof from land or locations on 04:15PM

1 which poultry waste has been stored, spread or
2 disposed of?

3 MR. McDANIEL: Object to the form.

4 A I'm getting tired. Would you mind reading
5 that again?

04:15PM

6 Q I'm asking whether Simmons has an opinion
7 whether or not there exists environmental and human
8 health effects resulting from runoff or release of
9 poultry waste or any constituents thereof from land
10 or locations on which poultry waste has been stored,
11 spread or disposed of?

04:15PM

12 MR. McDANIEL: Object to the form.

13 A We don't believe from a human health aspect
14 that there is anything been documented to the effect
15 that would show there has been any human health
16 issues involved. As far as the environmental side
17 of it, we do know that if it's in excess, there is
18 potential from the environmental side.

04:16PM

19 Q Potential harm to the environment?

20 A Yes, sir.

04:16PM

21 Q Does Simmons know whether blue-green algae can
22 be harmful to the environment or humans?

23 MR. BOND: Object to the form.

24 A As far as humans, no. As far as the
25 environment, depends on what you're talking as far

04:16PM

1 as being harmful.

2 Q Okay. Does Simmons know if certain levels of
3 dissolved oxygen have any impact on aquatic life?

4 MR. McDANIEL: Object to the form.

5 A Aquatic life being -- 04:17PM

6 Q Generally fish or other things that you find
7 swimming in water.

8 A As far as the amount of dissolved oxygen?

9 Q Yes, sir.

10 A Yes, it does have an effect. 04:17PM

11 Q And what do you know would be that impact?

12 A Too low of dissolved oxygen, you can't sustain
13 fish.

14 Q And do you know -- does Simmons know whether
15 phosphorus has any correlation to levels of 04:17PM
16 dissolved oxygen in water?

17 MR. McDANIEL: Object to the form.

18 A I personally don't know and would have to find
19 out for Simmons.

20 Q Does Simmons know if bacteria in water can be 04:17PM
21 harmful to humans or the environment?

22 MR. McDANIEL: Object to the form.

23 A Certain bacterias found in water could, yes.

24 Q Does Simmons know if fecal coliform in water
25 can be harmful to humans or the environment? 04:18PM

1 **A** Yes, it does know.

2 **Q** And it can be harmful?

3 **A** Yes.

4 **Q** Area of Inquiry No. 18, I'll read it to you.

5 Efforts undertaken by Simmons, directly or 04:18PM

6 indirectly, to evaluate and/or quantify any

7 environmental and human health effects, impacts of

8 runoff, discharge, release of poultry waste or

9 constituents thereof from land or locations within

10 the IRW, Illinois River watershed, on which poultry 04:18PM

11 waste generated by your poultry growing operations,

12 referring to contract growers, has been stored,

13 spread and/or disposed of. Are you prepared to

14 speak to that subject today as the designee of

15 Simmons Foods? 04:19PM

16 **A** After a break. I need a break.

17 **Q** You want a break now?

18 **A** Yes.

19 **Q** Did you see the card?

20 **A** Yes, I did. 04:19PM

21 **Q** All right. Let's take a break.

22 VIDEOGRAPHER: We're now off the Record.

23 The time is 4:18 p.m.

24 (Following a short recess at 4:19 p.m.,

25 proceedings continued on the Record at 4:29 p.m.) 04:29PM

1 VIDEOGRAPHER: We are back on the Record.

2 The time is 4:29 p.m.

3 Q Mr. Murphy, please, for the benefit of the
4 court tell us what Simmons has done to identify and
5 describe all efforts Simmons has taken to evaluate
6 any environmental effect of poultry waste runoff
7 from land within the IRW.

04:29PM

8 MR. ELROD: Object to the form.

9 A We've been dependent on the studies made by
10 the States of Arkansas and Oklahoma as far as
11 letting us know or trying to determine what effects
12 that might be.

04:30PM

13 Q Have you been dependent upon anyone other than
14 the State of Arkansas or Oklahoma with regard to
15 studies?

04:30PM

16 A No, sir.

17 Q Identify and describe all efforts Simmons has
18 taken to evaluate any human effect of poultry waste
19 runoff from land within the IRW.

20 A We are still of the opinion that there's no
21 documented evidence that there is any health risk
22 associated with poultry litter.

04:30PM

23 Q I'm going to hand you what's been marked as
24 Exhibit 18. I have just excerpted a portion of the
25 third-party complaint that was filed in part on

04:31PM

1 behalf of Simmons to that area. This is like an 80
2 or 90-page document so I've cut it down to three
3 pages so we could see a couple of items, and in
4 particular the third page of this third-party
5 complaint, in Paragraph 3 Simmons and the other

04:31PM

6 integrators make the complaint that any
7 contributions from poultry litter applications by
8 third-party plaintiffs, that would be the
9 integrators, or the independent contract poultry

10 farmers with whom they contract to the overall
11 loading of phosphorus, nitrogen or other purportedly
12 harmful constituent in the IRW, which contribution
13 is denied, would be insignificant in comparison to
14 the contributions of the third-party defendants and
15 the thousands of other persons, corporations and

04:31PM

04:31PM

16 political subdivisions operating within the IRW.
17 I'll give you a moment to read that again and
18 understand it and then I'm going to ask you what
19 facts or information you base that assertion on on
20 behalf of Simmons Foods.

04:32PM

21 **A** Okay. I know there's been some studies in
22 regard to what other types of sources of phosphorus
23 that could be contributing to the watersheds. I
24 know there's one study -- I believe the gentleman's
25 name is Dan Storms for the State of Oklahoma. I

04:32PM

1 think in his report stated that somewhere around 15
2 percent of the phosphorus loading in the Illinois
3 River watershed was attributed to poultry.

4 Q Is there any other study?

5 A No.

04:33PM

6 Q Have you read that study?

7 A Just excerpts from it.

8 Q Okay, and so you haven't read the entire
9 study?

10 A Not the entire study, no, sir.

04:33PM

11 Q Do you know whether anybody in Simmons has?

12 A I do not.

13 Q Is that the sole basis then for the allegation
14 that contributors other than poultry litter, or let
15 me restate it. That the contribution for poultry
16 litter applications is insignificant in comparison
17 to others?

04:33PM

18 MS. BRONSON: Object to the form.

19 MR. McDANIEL: I object to the extent it's
20 seeking production of expert materials before the
21 deadline.

04:33PM

22 A I don't know personally. I do know there have
23 been studies made in regard to other sources of
24 phosphorus in the watershed.

25 Q Other than Dan Storms?

04:34PM

1 **A** Yes.

2 **Q** All right, and when you say you know, are you
3 referring to Simmons Foods or are you referring to
4 yourself all of a sudden?

5 **A** Personally. 04:34PM

6 **Q** The Storm study that you referred to?

7 **A** Yes.

8 **Q** Do you have a copy of it?

9 **A** I just have excerpts.

10 **Q** Can you tell me why that wasn't produced in
11 this document request to the State of Oklahoma?

04:34PM

12 **A** Information came to me after the documentation
13 request.

14 **Q** All right, and the excerpts that you have, do
15 you know whether or not that's a draft or a final
16 report? 04:34PM

17 **A** I do not know.

18 **Q** Let me hand you what's been marked as Exhibit
19 34 and look at that document and familiarize
20 yourself with it and I'll ask you some questions. 04:35PM
21 You said earlier you're familiar with Don Allen?

22 **A** I said I met him.

23 **Q** Okay, and this letter is written in '97 where
24 it has on the logo as the Arkansas Poultry
25 Federation, which we now agree is renamed; is that 04:36PM

1 correct?

2 **A** That's correct.

3 **Q** This letter is written to Ken Neal, editor for
4 the Tulsa World, but importantly it includes in this
5 information that Mr. Allen believed would be helpful
6 for Mr. Neal in his understandings of some issues.

04:36PM

7 I ask you to turn to Page 7296, which is Page 2 of
8 his information that's attached, and looking at that
9 portion near the second half of the page it says,
10 the phosphorus problems with lakes and streams
11 include sources other than the poultry industry. Do
12 you see that?

04:36PM

13 **A** Yes, sir.

14 **Q** And then it goes on to say statistical
15 information about Benton County, Arkansas compiled
16 by the Arkansas Agricultural Statistics Service and
17 livestock phosphorus data compiled by the Natural
18 Resource Conservation Service estimate the following
19 phosphorus contributions from various agricultural
20 activities. The top of the list says poultry,
21 broiler/turkey, 73 percent. Does Simmons agree or
22 disagree with that statement?

04:36PM

04:37PM

23 MR. BOND: Object to form.

24 MR. GRAVES: Object to the form.

25 MR. McDANIEL: Object to form.

04:37PM

1 **A** Speculation on my part. Things may have
2 changed since that time period.

3 MR. ELROD: Object to the form.

4 **Q** Based on this number, just on Benton County
5 alone, that wouldn't appear to be insignificant in
6 comparison to other contributors, would it?

04:37PM

7 MR. McDANIEL: Object to the form.

8 MR. ELROD: Object to the form.

9 MS. BRONSON: Object to form.

10 **A** Again, this is one study on it. There's
11 contradicting studies with regard to this.

04:37PM

12 **Q** Are you familiar with how much area of Benton
13 County is in the Illinois River watershed?

14 **A** Not specifically, no, sir.

15 **Q** Let's change subjects on you again. I want to
16 talk about Inquiry No. 3, the ingredients and
17 composition of feed formulas, past and present, used
18 at your poultry growing operations within the IRW.
19 Are you aware of feed formulas being produced in
20 this case?

04:37PM

04:38PM

21 **A** Vaguely, yes, sir.

22 **Q** Let me hand you what's been marked Exhibit No.
23 4.

24 MR. GARREN: John, this has been designated
25 attorney eyes. I wanted to point that out to you.

04:39PM

1 I wanted to make you aware of that.

2 Q My question to you, sir, is, is this document,
3 at least the first page, is that an indication of
4 how one would determine a feed formula used by
5 Simmons Foods? 04:39PM

6 A At some point in time. It could change,
7 though.

8 Q Yeah. This one is dated July of '02, is it
9 not?

10 A Yes, sir. 04:39PM

11 Q At the very, very top.

12 MR. ELROD: I think the way we're going to
13 handle this, she is going to seal this in a
14 different envelope; is that true?

15 MR. GARREN: Well, the exhibit certainly 04:39PM
16 can be. I don't anticipate my questions would be
17 anything that would cause attorney eye only
18 privilege. If you feel I'm getting into an area to
19 designate the transcript, then we'll do that.

20 MR. ELROD: I don't think we're there, but 04:40PM
21 this needs to be sealed for attorneys eyes only when
22 you do the exhibits.

23 MR. GARREN: Exhibit 4.

24 Q All right. So what I'm trying to establish is
25 what records would one look to to find the kind of 04:40PM

1 feed ingredients used by Simmons Foods?

2 A Look at our actual feed formulations.

3 Q And Exhibit 4, do you see any of those in
4 Exhibit 4?

5 A Actual feed formulations? 04:40PM

6 Q Yes, sir.

7 A No, sir.

8 Q So explain to me what it is I'm looking at in
9 the first four pages of Exhibit 4, that is Page
10 31797 through -- well, they're not in order. I 04:40PM
11 apologize.

12 A Okay.

13 Q They're skipping. First four pages appear to
14 be similar in nature and form; do you see that?

15 A Uh-huh. 04:41PM

16 Q I think they speak to a different kind of
17 formula by name. You have a grower, a starter,
18 different medication included; do you see that?

19 A Right. These would be the constituents
20 typically found in our feed formulation. I guess 04:41PM
21 I'm just accustomed to seeing them in a different
22 format.

23 Q Okay. In looking at this, if you would tell
24 me, does this reflect the percentage of each of the
25 ingredients in that first column under PCT? 04:41PM

1 **A** They look like they could be for this
2 particular time period. Again, these do change and
3 fluctuate.

4 **Q** All right. How often do these formulas
5 change?

04:41PM

6 **A** Well, on a least cost formulation basis and it
7 could change on a daily basis.

8 **Q** And you say least cost basis, and that's based
9 upon price of probably your largest ingredients,
10 such as corn and that sort of thing?

04:42PM

11 **A** That's correct.

12 **Q** And is it a fact that Simmons uses as one of
13 its ingredients a product known as 3-Nitro?

14 **A** Yes, sir.

15 **Q** That that product is produced by a company
16 called Alpharma; is that correct?

04:42PM

17 **A** To my understanding, yes, sir.

18 **Q** And it contains Roxarsone?

19 **A** Yes, in small quantity.

20 **Q** Is the materials that go in to make up the
21 feed provided to the birds generally imported from
22 outside the Illinois River watershed?

04:42PM

23 **A** The feed that goes in to?

24 **Q** Yes, sir.

25 **A** Yes, sir.

04:42PM

1 Q The components of what ultimately is the
2 feed --

3 A Yes, sir.

4 Q -- that's generally materials that come from
5 other sources not within the Illinois River
6 watershed; correct?

04:43PM

7 A That would be a true statement, yes, sir.

8 Q In fact, a lot of it, such as corn, may come
9 from various other states across the nation; is that
10 true?

04:43PM

11 A That's correct.

12 Q Does Simmons add phosphorus to its feed?

13 A In small quantities, yes, sir.

14 Q Does Simmons include hormones in its feed?

15 A No, sir.

04:43PM

16 Q Have they ever?

17 A No, sir.

18 Q Does Simmons know if birds produce hormones in
19 their waste?

20 MR. McDANIEL: Object to the form.

04:44PM

21 Q Maybe I can rephrase it. Does Simmons know
22 whether hormones exist within the waste produced by
23 the birds?

24 A It's not introduced into the bird as far as
25 the feed.

04:44PM

1 Q That's not my question, though. We've
2 established that. Does Simmons know whether or not
3 hormones exist within the excrement of the bird?

4 A We have not tested for that.

5 Q So as I understand your testimony, you would 04:44PM
6 see documentation different than what I'm looking at
7 in the first four pages of this Exhibit 4?

8 A As far as the actual format of a formulation,
9 yes, sir.

10 Q Skip back a little bit and there's a different 04:44PM
11 form. It says -- and it's cut off at the top,
12 formula report, but it says Simmons AG Page No.
13 31786. Do you see that document?

14 A Yes, sir.

15 Q I think there's handwriting on it that says 04:44PM
16 Jack Cowgur and some other notations.

17 A Yes, sir.

18 Q Is this a form that you would normally see or
19 is this again a different form?

20 A It's a different form. 04:45PM

21 Q Can you tell us what this form purports to
22 tell us?

23 A It looks like the pounds of each of the
24 ingredients that makes up the ton of feed.

25 Q And are your feeds -- are the feed formulas 04:45PM

1 all coded to a specific number when one is produced
2 different than another one?

3 A Yes.

4 Q So every time you produce a different formula,
5 you'll assign a different number to it? 04:45PM

6 A That's correct.

7 Q And do I -- is it -- am I correct in
8 understanding that there are times where you will
9 use the same formula more than once?

10 A Yes, sir. 04:45PM

11 Q Does Simmons know whether or not any of the
12 ingredients that go in to make up its feed or any --
13 at any time are listed on the CERCLA hazardous
14 substance list?

15 MR. McDANIEL: Object to the form. 04:46PM

16 MS. BRONSON: Object to the form.

17 A They are not.

18 Q Does Simmons know whether or not any of the
19 waste or excrement that's produced by the bird or
20 any of the constituents of that excrement are on
21 that CERCLA hazardous waste list? 04:46PM

22 MR. McDANIEL: Object to the form.

23 A As far as I know, there's none.

24 Q Is that you speaking individually or is that
25 you speaking for Simmons? 04:46PM

1 **A** Personally.

2 **Q** Do you know whether Simmons knows whether or
3 not any constituents of the poultry excrement is on
4 the CERCLA hazardous waste list?

5 MR. McDANIEL: Object to the form.

04:47PM

6 **A** I would have to double check.

7 **Q** Who would you check with?

8 MR. ELROD: Me. It's true.

9 MR. RIGGS: We want a true answer.

10 **A** John.

04:47PM

11 **Q** Is that who you would check with?

12 **A** John.

13 **Q** How long does Simmons maintain records
14 regarding ingredients of feed used for the birds?

15 **A** That would go back five years.

04:47PM

16 **Q** Is there any governmental time period that
17 requires the preservation of those feed formulas?

18 **A** There's an FDA time period that's there.
19 Personally I don't know it off the top of my head.

20 **Q** Do you believe your five years complies with
21 that requirement?

04:47PM

22 **A** Yes.

23 **Q** Does the formula used by Simmons Foods contain
24 phosphorus compounds?

25 **A** Contains phosphorus, yes.

04:48PM

1 Q All right, and as far as -- well, we've
2 established you don't know for sure whether that's
3 elemental, do you?

4 A Not being a chemist, yes, that's true.

5 Q Does your feed ingredients contain any 04:48PM
6 nitrogen or nitrogen compounds?

7 A Not that I'm aware of, no.

8 Q Do you know whether your feed contains any
9 metals, such as copper and zinc?

10 A Very low quantities, only sufficient for the 04:48PM
11 bird's nutrition.

12 Q Do you give antibiotics to the birds?

13 A Occasionally, yes, sir.

14 Q And what's the purpose for the antibiotics?

15 A Of course, for bird health, the integrity of 04:49PM
16 -- in layman's terms, integrity of the gut of the
17 bird, making sure that from a digestability
18 standpoint that there's no issue.

19 Q Do -- does the University of Arkansas that we
20 saw in the contract that was providing broilers to 04:49PM
21 you, do they do research with regard to your use of
22 antibiotics, if you know?

23 A No, sir, they don't.

24 Q If they do, they don't do them in your houses
25 that they are contracted to grow; is that -- 04:50PM

1 **A** They may have hen trials, much smaller groups
2 of birds that they may, but they don't do it for
3 Simmons.

4 Q Okay. So they're not using any Simmons birds
5 to do any trials that you just explained might
6 occur?

7 **A** That's correct.

8 Q Where would they get birds to do those kind of
9 trials?

10	A	Different integrators.
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11 Q Can you tell me -- I'm going to change
12 subjects on you here. Does Simmons contribute to or
13 is it a member of the Farm Bureau?

14	A	No, sir.
----	---	----------

15 Q Is Simmons a member of or contribute to a
16 group called Poultry Community Council?

17 **A** I understand we've made some contributions to
18 that group.

19 Q Is Simmons a member of that group?

20 **A** I'm not sure.

21 | ○ Who would know?

22 | **A** Mark Simmons.

23 Q Does Simmons -- is Simmons a member of or
24 contribute to the Poultry Partners, Inc.?

25 **A** We contribute to it.

1 Q And what do you contribute to them?

2 MR. ELROD: I think this is -- hang on a
3 second. Other counsel may need to remind me, but
4 are we claiming privilege on these questions and
5 these issues on joint defense? 04:52PM

6 MR. McDANIEL: On Poultry Partners, Ken
7 Williams asserted his client's confidentiality over
8 that on Poultry Partners, the identification of
9 contributors, et cetera.

10 MR. ELROD: So I'm going to have to honor 04:52PM
11 Ken Williams' assertion on behalf of Poultry
12 Partners and ask the witness not to respond to any
13 questions about contributions to Poultry Partners,
14 and I guess we'll just have to hash that out later.

15 MR. GARREN: My recollection is that the 04:52PM
16 requests were for Poultry Partner financial
17 documents through Miss Saunders. That's what the
18 objection was. I'm now going to ask him what
19 Simmons is doing with regard to that, and I think
20 it's an entirely different bird. If you're going to 04:53PM
21 instruct him not to answer, let's make the Record
22 and we're going to take it someplace to deal with
23 it.

24 MR. ELROD: Sure.

25 MR. McDANIEL: If we're going to state for 04:53PM

1 this Record what we believe Ken Williams did, I was
2 there and he stated that --

3 MR. GARREN: I'm not questioning what he
4 stated, Mr. McDaniel. What I'm questioning is what
5 led up to it. 04:53PM

6 MR. GRAVES: You made your characterization
7 of what he stated, and I think we can state what our
8 belief is about what he stated.

9 MR. McDANIEL: You made your Record and I
10 can make mine. When his client was asked to 04:53PM
11 identify who the supporters were and the nature and
12 amounts of their contribution, he invoked a business
13 confidential and proprietary information objection,
14 and his witness refused to answer. That's the
15 position that at least I asserted on behalf of my 04:53PM
16 client to honor that.

17 MR. GARREN: Now, I'm going to ask you
18 today, is it Simmons' position that they are not
19 going to answer questions about whether or not they
20 contribute to Poultry Partners, Inc.? 04:54PM

21 MR. ELROD: That's our position.

22 Q Does Poultry Partners, Inc., contribute other
23 than direct financial -- let me restate it. Does
24 Simmons make contributions other than financial
25 contributions to Poultry Partners, Inc.? 04:54PM

1 MR. ELROD: I think you can respond to that
2 one, a non-monetary nature.

3 A I know we've hosted or at least offered our
4 offices to have meetings within that group.

5 Q Have they in fact occurred in your offices? 04:54PM

6 A At least once, yes.

7 Q Has Simmons provided any other non-monetary
8 contribution?

9 A Not that I'm aware of, no.

10 Q Within Simmons Foods, who would have the best 04:55PM
11 knowledge of any contributions made financially to
12 the Poultry Partners, Inc.?

13 A Mark Simmons would have the best knowledge.

14 Q Has Simmons offered or provided any
15 consultation or advice to Poultry Partners, Inc.? 04:55PM

16 A Personally I'm not aware of it, no.

17 Q And you're talking yourself personally. Do
18 you know whether Simmons Foods has?

19 A It would be best answered by Mark Simmons
20 probably. 04:55PM

21 Q With regard to BMPs, Inc., other than those
22 contributions that are shown in the grant, does
23 Simmons underwrite or support BMPs, Inc., the
24 corporation?

25 A Not that I'm aware of, no. 04:56PM

1 Q Does -- I think you've said this but I want to
2 clarify it. Poultry Federation, you are a member of
3 the Poultry Federation?

4 A Yes.

5 Q And you pay a dues or fees for that 04:56PM
6 federation, do you not?

7 A That's correct.

8 Q United States Poultry & Egg Association, do
9 you pay dues there as a member?

10 A Yes, sir. 04:56PM

11 Q The National Chicken Council, are you a member
12 of that organization?

13 A Yes, sir.

14 Q How long have you been so?

15 A Last five years. 04:56PM

16 Q Any of these federations or associations that
17 we just described, the last three, Poultry
18 Federation, U.S. Poultry & Egg, Chicken Council,
19 they publish newsletters?

20 A Yes. 04:57PM

21 Q And is Simmons on --

22 A I have not seen one from the NCC. I've seen
23 one from U.S. Poultry & Egg and U.S. Poultry
24 Federation.

25 Q Do any of those three associations support 04:57PM

1 seminars or workshops relating to poultry growing?

2 **A** U.S. Poultry & Egg does.

3 **Q** And do they provide any workshops or seminars
4 with regard to poultry waste handling or
5 disposition? 04:57PM

6 **A** Again, U.S. Poultry & Egg does.

7 **Q** And we've looked at some of their
8 documentation today?

9 **A** Yes.

10 **MR. GARREN:** Let's take five minutes and 04:57PM
11 I'm going to take a break and we'll have five more
12 minutes to finish this thing up.

13 **VIDEOGRAPHER:** We're now off the Record.
14 The time is 4:57 p.m.

15 (Following a short recess at 4:57 p.m., 04:58PM
16 proceedings continued on the Record at 5:01 p.m.)

17 **VIDEOGRAPHER:** We are back on the Record.
18 The time is 5:01 p.m.

19 **Q** Mr. Murphy, I've handed you Exhibit 37.

20 **A** Yes, sir. 05:02PM

21 **Q** The first page of that that says pre-checklist
22 contract farms, is that a document that a service
23 tech or representative of Simmons would fill out?

24 **A** Yes, sir.

25 **Q** And this is -- I'm not going to go into detail 05:02PM

1 but it lists numerous things that are reviewed and
2 checked by a service tech, in this case before the
3 birds are placed; is that correct?

4 **A** That's correct.

5 **Q** And these things need to be in proper form in
6 order for the birds to be placed?

05:02PM

7 **A** Yes, sir.

8 **Q** And the second page of this, is this an
9 example of -- it says Simmons grower or growing
10 management report. Again, is this a service tech
11 report that's left at the farm when they make
12 inspections?

05:02PM

13 **A** Yes, sir.

14 **Q** Are there any other forms that's used by the
15 service tech besides this that I'm not seeing?

05:02PM

16 **A** These are the ones I'm familiar with.

17 **Q** Okay. Back to one other question and, that
18 is, with regard to payments made to the Poultry
19 Partners, Inc., when you made that payment, did you
20 send along a notice of confidentiality to the
21 Poultry Partners, Inc.?

05:03PM

22 **MR. ELROD:** Object to form, assumes facts
23 not in evidence and a bunch of other things.

24 **Q** You can answer that if you can.

25 **A** I don't know.

05:03PM

1 Q You didn't write the check?

2 A No, sir.

3 Q Do you know who did?

4 MR. ELROD: You're assuming -- well, object
5 to form.

05:03PM

6 Q Assuming that a check was written by Simmons
7 Food, Inc., to Poultry Partners, Inc., it would have
8 gone through a bank account, would it not?

9 A If a check were written, yes, sir, I assume.

10 Q And you didn't advise the bank account to --
11 the bank to keep it confidential?

05:03PM

12 MR. GRAVES: I object to the form again for
13 the same reason as the original objection, that you
14 are assuming a check was written again the way that
15 question is worded, and you're trying to get through
16 the back door to something that's already been
17 objected to.

05:04PM

18 Q There were no instructions given to a bank to
19 keep it confidential if such a check were written?

20 MR. GRAVES: Is that a question? It sounds
21 like a statement.

05:04PM

22 MR. GARREN: Yeah, it's a question.

23 A If there was a bank --

24 Q Let's start over. Assuming Simmons Food wrote
25 a check with the payee being Poultry Partners, Inc.,

05:04PM

1 they didn't advise their bank to keep it
2 confidential?

3 MR. ELROD: Object to the form.

4 Q Did they?

5 A If there were a check and if there were a 05:04PM
6 bank, no, they weren't advised.

7 MR. GARREN: I think I'm through. It's
8 5:00.

9 MR. ELROD: I do just have a few questions.

10 MR. GARREN: Really? 05:04PM

11 MR. ELROD: Yeah.

12 MR. GARREN: Okay.

13 MR. ELROD: If it opens some things that
14 you want to talk about further, that's fine with me.

15 CROSS EXAMINATION

16 BY MR. ELROD:

17 Q You were asked about -- these are my words --
18 good deeds regarding environmental issues and about
19 Simmons' dedication to the environment?

20 A Yes, sir. 05:05PM

21 Q In order that we will not be arguably
22 prohibited from talking about these things at trial,
23 I want to ask you some questions about a few of
24 these that will fit in that category. Has Simmons
25 Foods encouraged the use of BMPs by its independent 05:05PM

1 contract growers since at least the early 1990's?

2 MR. GARREN: Leading, suggestive, object as
3 to form.

4 A Yes, sir.

5 Q And has Simmons contractually required that 05:05PM
6 its independent contractor growers have nutrient
7 management plans since at least I think the late
8 1990's, maybe the early 2000's?

9 MR. GARREN: Object to the form, leading.

10 A Yes, sir. 05:05PM

11 Q And does Simmons Foods in fact now monitor
12 whether or not its growers have nutrient management
13 plans?

14 A Yes, sir.

15 Q And has Simmons Foods assured itself that all 05:05PM
16 of its growers do in fact either have nutrient
17 management plans in place or under application at
18 the present time?

19 A Yes, sir.

20 Q And has Simmons Foods since at least the late 05:06PM
21 '90's, maybe early 2000's required contractually its
22 independent contract growers comply with all laws of
23 the states of Oklahoma and Arkansas?

24 A Yes, sir.

25 Q Do those include environmental laws? 05:06PM

1 MR. GARREN: Object to the form.

2 A Yes, sir.

3 Q And do you know whether Claude Rutherford as a
4 W-2 employee of Simmons Food was dedicated by the
5 company to being utilized by the Arkansas governor's
6 animal waste task force in the 1990's?

05:06PM

7 A He was.

8 Q And the company paid his salary while he was
9 dedicated to that job; is that true?

10 A That's true.

05:06PM

11 Q And do you know whether Claude was also active
12 in the Oklahoma governor's animal waste task force?

13 A It's my understanding that he was, yes.

14 Q Referring to the Southwest City facility, has
15 Simmons Foods recently won a national award for its
16 contributions to water quality?

05:06PM

17 MR. GARREN: Objection to form of the
18 question.

19 A Yes, sir.

20 MR. GARREN: Leading, suggestive.

05:07PM

21 Q And have you also installed at substantial
22 cost to the company sophisticated air emission
23 controls at the Southwest City facility?

24 MR. GARREN: Same objection as to form.

25 A Yes, sir, we have.

05:07PM

1 Q And has the company also made a substantial
2 gift to the Oklahoma Scenic Rivers Commission?

3 A Yes, it has.

4 Q And does it have ongoing responsibilities
5 towards making gifts to the Oklahoma Scenic Rivers
6 Commission? 05:07PM

7 A Yes, it does.

8 Q Has Simmons Foods supported the relatively new
9 Arkansas law and the upcoming regulations regarding
10 the land application of chicken litter on the 05:07PM
11 Arkansas side of the state line?

12 MR. GARREN: Object as to form, leading.

13 A Yes.

14 Q And has Simmons Foods invested substantial
15 money, along with Tyson Foods, in an attempt to 05:07PM
16 develop I think you referred to it as composting but
17 I'm referring to it as a pelletizing program for
18 utilization of chicken litter?

19 MR. GARREN: Object as to form, leading.

20 A Yes, sir. 05:08PM

21 Q And has Simmons Foods sponsored at its
22 physical headquarters in Siloam Springs what I call
23 a come-one-come-all conference to determine
24 alternative uses for chicken litter?

25 A Yes. 05:08PM

1 Q And has Simmons Foods provided some financial
2 support for BMPs, Incorporated?

3 A Yes, they have.

4 Q And is the job of BMPs, Incorporated, among
5 other things, to put together a hopefully
6 sustainable transportation program to move litter
7 out of the Illinois River watershed?

05:08PM

8 MR. GARREN: Object to the form.

9 A Yes, sir.

10 Q And has the company for a number of years, I
11 think it was one of the exhibits, in fact moved
12 litter from the Grand Lake, Eucha-Spavinaw
13 watersheds from company-managed farms outside of
14 those watersheds?

05:08PM

15 MR. GARREN: Object to the form and
16 relevance with regards to this lawsuit.

05:09PM

17 A Yes, they have.

18 Q And the company operates a wastewater
19 treatment facility at its Southwest City facility;
20 is that true?

05:09PM

21 A That's correct.

22 Q And has it enacted the stringent phosphorus
23 controls on that wastewater facility?

24 MR. GARREN: Object again to the form as
25 leading.

05:09PM

1 **A** Yes, sir.

2 **Q** And is it in fact discharging substantially
3 less than .5 parts per million phosphorus out of
4 that facility?

5 **A** That's correct. 05:09PM

6 MR. GARREN: Object to the form, leading.

7 **Q** Are there other things we might think of later
8 given enough time?

9 **A** Possibly.

10 MR. ELROD: That's all I have. I'm done. 05:09PM

11 MR. GARREN: He's going to read and sign I
12 assume?

13 MR. ELROD: Yeah.

14 MR. GARREN: Before we go off the Record,
15 let's assign an exhibit number to the two pages that 05:10PM
16 are loose here. Let's mark them 15 and 38. Any
17 objection? We'll make this 3215 as Exhibit 15, the
18 corporate structure.

19 MR. ELROD: Structure is 15?

20 MR. GARREN: Yes. So the other document, 05:10PM
21 when we find it, will be 38.

22 MR. ELROD: That's the IRW stats?

23 MR. GARREN: Yes. I got it right here.
24 We'll have a copy of it. The original I think, Mr.
25 Murphy, you would have in your stack. 05:10PM

1 VIDEOGRAPHER: We're now off the Record.
2 The time is 5:11 p.m.
3 (Whereupon, the deposition was
4 concluded at 5:11 p.m.)
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SIGNATURE PAGE

I, Gary Murphy, do hereby certify that the foregoing deposition was presented to me by Lisa **A.** Steinmeyer as a true and correct transcript of the proceedings in the above styled and numbered cause, and I now sign the same as true and correct.

WITNESS my hand this _____ day of _____, 2007.

GARY MURPHY

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2007.

Notary Public

My Commission Expires:

C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, Lisa A. Steinmeyer, Certified
Shorthand Reporter within and for Tulsa County,
State of Oklahoma, do hereby certify that the above
named witness was by me first duly sworn to testify
the truth, the whole truth and nothing but the truth
in the case aforesaid, and that I reported in
stenograph HIS deposition; that my stenograph notes
were thereafter transcribed and reduced to
typewritten form under my supervision, as the same
appears herein.

I further certify that the foregoing 268
pages contain a full, true and correct transcript of
the deposition taken at such time and place.

I further certify that I am not attorney
for or relative to either of said parties, or
otherwise interested in the event of said action.

WITNESS MY HAND AND SEAL this 5th day of
August, 2007.

LISA A. STEINMEYER, CRR
CSR No. 386

CORRECTIONS TO THE DEPOSITION OF
GARY MURPHY

PAGE AND LINE NUMBER

CORRECTION

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